IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4349 OF 2006

Murlidhar Kondaji Gaikwad .. Applicant
Versus
State of Maharashtra .. Respondent

Mr.S.K.Shinde for applicant
Mr.P.A.Pol, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 20th December 2006

P.C.

. Mr.Shinde, does not press this application insofar as applicant No.1, Murlidhar Kondaji Gaikwad is concerned. The application is dismissed insofar as applicant No.1 is concerned. However, this does not prevent him from approaching regular court for bail and the observations by the Additional Sessions Judge as also this Court are strictly to be taken as being

made while deciding Anticipatory Bail application and they shall not influence the trial court in any manner, while deciding the application of applicant No.1 for bail, if filed. Mr.Shinde seeks time for applicant to surrender. Time granted. Applicant shall surrender before the I.O. on or before 26th December 2006. If he does not surrender, it would be open for prosecution to initiate such steps as permissible in law.

2. Second applicant has contended that his apprehension of arrest in C.R.No.II-41 of 2006 registered by Lasalgaon police station for offences punishable under the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and Sections 489, 323, 504, 506 read with 34 I.P.C. is justified.

2. Mr.Shinde submits that the statement of complainant Deubai, a copy of which is at page 15

of this application, clearly attributes a role sofar as applicant No.1 is concerned. All that is alleged is that applicant No.2 is jointly claiming the land along with applicant No.1. However, as far as the alleged abuses hurled at the complainant in the name of her caste and threats are concerned, applicant No.2 is not named. The apprehension as far as second applicant is that he may try and grab the land of complainant. For these reasons and when all documents are already in the custody of investigation machinery so also the applicant No.2 having immovable property, fixed roots and is permanently residing at the address mentioned so also being available for investigation, his case be considered for anticipatory bail.

3. An affidavit is filed by the Sub-Divisional Police Officer, Niphad Division and it is pointed out that the applicants who are original accused Nos. 1 and 2 encroached upon

the land and fixed the boundaries. The incident took place when the measurements were being taken. As far as the applicant No.2 is concerned, he applied for measurement by paying requisite fees. Beyond this, in the alleged incident, it is not shown as to how the applicant No.2 played any part. In such circumstances, prima facie, there is merit in the contention of Mr.Shinde that no case is made out either under the Atrocities Act or under the I.P.C. as far as applicant No.2 is concerned.

4. Having regard to all circumstances and finding his custodial interrogation unnecessary, the application of second applicant for pre-arrest bail is granted in following terms:-

i) In the event of the arrest of the applicant No.2. (Bandu Murlidhar Gaikwad) in connection with C.R.No.II-41 of 2006 registered with Lasalgaon Police

Station, the he shall be enlarged on bail in the sum of Rs.10,000/- with one or two sureties in the like amount.

ii) The bail is granted subject to condition that the applicant No.2 (Bandu Murlidhar Gaikwad) will attend the Lasalgaon police station as and when summoned.

iii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the police officer/ investigating agency. The applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

v) This order will enure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)